

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

IN THE MATTER OF: PROTEST
MISCELLANEOUS ROOF
REPLACEMENT, PHASE II
STATE PROJECT H51-9708-PG
ROOFCO INC. OF SUMTER, SC
vs.
MEDICAL UNIVERSITY OF SOUTH
CAROLINA

DECISION

POSTING DATE: November 29, 2000

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Roofco Inc. of Sumter, SC (Roofco) under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code (Code), for an administrative review on the Miscellaneous Roof Replacement, Phase II project (Project) for Medical University of South Carolina (MUSC). Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution by mutual agreement and determined that mediation was not appropriate. A decision is issued without a formal hearing after a thorough review of the bidding documents and the applicable law.

NATURE OF THE PROTEST

MUSC solicited and received bids to perform selected roofing work. MUSC determined Moore Construction Co. of York County (Moore) to be the apparent low responsive and responsible bidder, and posted a Notice of Intent to Award accordingly. Roofco protests this decision on the grounds that Moore does not possess the specialty roofing contractors' license that is required.

FINDINGS OF FACT

1. On September 29, 2000 MUSC solicited bids for the Project
2. On November 2, 2000 MUSC received and opened bids from 5 prospective contractors.
3. On November 3, 2000 MUSC posted a Notice of Intent to Award the Project to Moore.
4. On November 9, 2000 Roofco submitted a timely protest of the proposed award.

5. On November 28, 2000 the Executive Director of the South Carolina Contractor's Licensing Board rendered an advisory opinion to the CPOC with respect to the contractors' licensing requirements for the Project. That opinion stated that the nature of the work requires a Specialty Roofing license and further, that Moore does not possess such a license and is therefore ineligible to bid this work.

DISCUSSION

CLAIMANT'S POSITION

Roofco contends that the work of the Project is Specialty Roofing as defined by the Contractors' Licensing Act (Act) and further, that Moore does not possess a Specialty Roofing endorsement on its General Contractors' license. Because Moore listed itself to perform the roofing work and did not list a properly licensed subcontractor, Roofco argues that Moore's bid should be rejected as non-responsive.

RESPONDENT'S POSITION

Moore contends that it possesses a General contractors-Building license which entitles it to undertake work of the nature required by the contract documents.

CPOC FINDINGS

The Contractor's Licensing Board (Board) is the state authority primarily responsible for enforcing the provisions of the Contractors' Licensing Act (Act). The CPOC gives great weight to the opinion of the Board as to how the Act should be interpreted and applied to a particular set of circumstances. The Board, through its Executive Director has advised the CPOC that the roofing work of the Project requires a contractor with a Specialty Roofing license and that Moore does not possess such a license. The CPOC finds no reason to disagree with the position of the Board on this matter. The CPOC finds that Moore, by virtue of its lack of proper licensing is ineligible to bid this work and its bid is therefore non-responsive. The protest of Roofco is upheld. The posting of the Notice of Intent to Award is hereby rescinded.

DECISION

It is the decision of the Chief Procurement Officer for Construction that Moore Construction of York, SC submitted a bid for roofing work for which it did not possess the proper contractors' licenses and cannot be considered for award. MUSC is hereby directed to award the Project to the lowest responsive and responsible bidder, consistent with its programmatic requirements.

A handwritten signature in black ink, reading "Michael M. Thomas". The signature is written in a cursive, flowing style.

Michael M. Thomas
Chief Procurement Officer
for Construction

November 29, 2000

Date

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4230, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer who shall forward the request to the Panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.